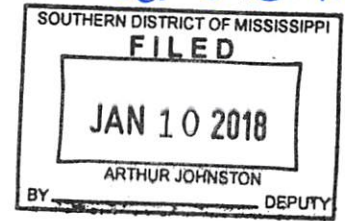


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION



DONNIE SYLVESTER, # T9481

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:17cv188-KS-MTP

MISSISSIPPI DEPARTMENT OF
CORRECTIONS

DEFENDANT

ORDER SEVERING HABEAS CLAIMS

BEFORE THE COURT is *pro se* Plaintiff Donnie Sylvester's Complaint [1]. He is incarcerated with the Mississippi Department of Corrections. He brings this action for release and damages, challenging the denial of earned release supervision. The Court has considered and liberally construed the pleadings.


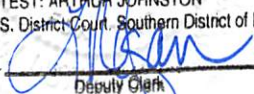
To the extent Sylvester seeks release, he must pursue a writ of habeas corpus. *Orellana v. Kyle*, 65 F.3d 29, 31 (5th Cir. 1995). To the extent he seeks damages, then the case may be cognizable under 42 U.S.C. § 1983. *Id.* "If such a § 1983 complaint contains both habeas and § 1983 claims, the district court should separate the claims and decide the § 1983 claims." *Id.* Therefore, the habeas claims are severed from this case. Rather than require him to file the habeas claims again, the Court directs the Clerk of Court to file a copy of the Complaint [1], motions [2, 6] for leave to proceed *in forma pauperis*, and this Order and open a new case on the 28 U.S.C. § 2254 habeas claims. The § 1983 claims for damages remain in the instant case.

IT IS THEREFORE ORDERED AND ADJUDGED that, for the reasons stated above, the habeas claims are **SEVERED**. The Clerk of Court shall open a new 28 U.S.C. § 2254 civil action on the habeas claims, and therein file a copy of the Complaint [1], motions [2, 6] for leave to proceed *in forma pauperis*, as well as a copy of this Order. The 42 U.S.C. § 1983 claims for

damages shall proceed in the instant civil action.

SO ORDERED AND ADJUDGED, this the 10th day of January, 2018.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE


I hereby certify that this instrument, document
No. 17-1018, filed on 1-10-18, is a true and
correct copy of the electronically filed original.
ATTEST: ARTHUR JOHNSTON
U. S. District Court, Southern District of Mississippi
By: 
Deputy Clerk